IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1168 OF 1997

IN

WRIT PETITION NO.1228 OF 1997

Manish Commercial Premises CHS Ltd. and anr. ...Appellants

v/s

Bombay Municipal Corporation and ors. ...Respondents

Mr B.B. Saraf i/b Mr Denzil D'Mello for Appellants.

Mr A.Y. Sakhare i/b Mr Nasir Shaikh for Respondents.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 27TH SEPTEMBER 2007.

P.C. :-

1. The limited grievance made by the appellants is that though the statutory power is conferred upon the Corporation to reduce or waive the amount of penalty levied for late payment of property tax, the application filed by the appellants for waiver or reduction of penalty has been rejected by the Corporation by a non-speaking order. Perusal of the record, however, shows that the application for waiver or reduction of penalty was made without depositing the amount of penalty. Even today, the learned counsel appearing for appellants is not in a position to state that the amount of penalty has been paid. Perusal of the petition also shows that the appeal was mainly directed against the attachment order. In our opinion, the appellants were not justified in seeking reduction or waiver of the amount of penalty without depositing the amount of penalty when admittedly there was no interim order passed by the Court staying recovery of the penalty. The learned counsel appearing for appellants submits that presently there is an Administrator appointed on the Society. Therefore, he is not in a position to make a clear statement. Taking overall view of the matter, in our opinion, following order would meet the ends of justice.

2. In case the appellants have already deposited the amount of penalty, within a period of four weeks from today, the appellants shall produce before the Assistant Assessor and Collector, E/South Ward, Bombay Municipal Corporation, N.M. Joshi Marg, Bombay, a document conclusively proving that the appellants have paid the amount of penalty. In case the appellants have not paid the amount of penalty, then the amount of penalty shall be paid by the appellants within a period of four weeks from today and a document conclusively showing that the amount of penalty has been paid shall be produced before the aforesaid Officer. Alongwith the document, the appellants may also submit their representation together with any documents on which they want to rely to the aforesaid Officer.

3. The Assistant Assessor and Collector, E/South Ward, bombay Municipal Corporation, N.M. Joshi Marg, Bombay shall forward the representation together with documents, if any, to the authority which is competent under the Act to consider applications for grant of exemption or waiver of the penalty. That authority shall consider the material produced by the appellants and make order in accordance with law, giving reasons for the same within a period of four weeks thereafter.

4. In case the Competent Authority reduces or waives the penalty, the appellants shall be entitled to claim adjustment of the amount towards future taxes that may be payable by the appellants.

5. In case the amount is paid and proof of payment is produced as directed above, the attachment of the property, if there are no other dues payable, shall stand lifted. In case the penalty is not paid and proof of payment is not produced by the appellants as directed above, this appeal shall stand dismissed automatically without further reference to the Court. Appeal is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)